

IN THE SUPREME COURT OF MISSOURI

**COOPER COUNTY, MISSOURI,
A BODY POLITIC AND CORPORATE,
BY AND THROUGH ITS GOVERNING BODY, THE
COUNTY COMMISSION OF
COOPER COUNTY, MISSOURI,**

Petitioner/Respondent

vs.

Supreme Court No. SC86086

**CIRCUIT COURT OF THE 18TH
JUDICIAL CIRCUIT OF MISSOURI,
DONALD BARNES
PRESIDING CIRCUIT JUDGE,**

Respondent/Appellant.

**ON APPEAL FROM
THE JUDICIAL FINANCE COMMISSION
OF THE STATE OF MISSOURI
CASE NOS. 03-0064 & 04-0066**

APPELLANT'S BRIEF

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CIRCUIT COURT OF THE 18TH JUDICIAL
CIRCUIT OF MISSOURI, DONALD
BARNES PRESIDING CIRCUIT JUDGE**

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JURISDICTIONAL STATEMENT

This is a Petition for Review from a decision by the Judicial Finance Commission declaring a portion of Appellant's budget as submitted to Respondent to be unreasonable. This Court has jurisdiction to review the decision of the Judicial Finance Commission pursuant to §477.600.7, RSMo.

STATEMENT OF FACTS

This is an appeal by the Circuit Court from a decision entered by the Judicial Finance Commission on May 29th, 2004. The question before the Judicial Finance Commission was whether the Circuit Court's budget request for the salary of a deputy juvenile officer was reasonable, and the amount of attorney fees the County should pay to the Circuit Court for representation. The case was before the Judicial Finance Commission on remand from this Court pursuant to an opinion entered January 13th, 2004, in Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004). The case was remanded with directions for the Judicial Finance Commission to consider the "specific elements" of the Circuit Court's funding request, and to determine the reasonable amount of attorney fees to be awarded to the Circuit Court.

While the case involving the 2003 budget was before the Judicial Finance Commission on remand, the County filed a second Petition for Review in regard to the 2004 budget. The second Petition raised two new defenses to the funding of the deputy juvenile officer's salary. One defense was based upon the maintenance of effort funding provision contained in §211.393.6, RSMo. The other new objection was based on §16 and §21 of art. X of the Missouri Constitution (commonly known as portions of the "Hancock Amendment"). (L.F. p. 5).¹ The

¹ The Judicial Finance Commission determined that the Hancock Amendment did not prohibit the funding request and the County has not appealed that finding.

Judicial Finance Commission consolidated the two cases when it took up the issues for hearing. (L.F. p. 16).

After a hearing conducted before the Judicial Finance Commission on March 22nd, 2004, the Judicial Finance Commission entered a split decision on May 26th, 2004. The decision, joined in by four of the seven Commissioners, ruled that the funding request for a deputy juvenile officer's salary was unreasonable. The Judicial Finance Commission ruled that Cooper County was exceeding the minimum maintenance of effort funding requirement under §211.393.6, and therefore, as a matter of law, the County could not be ordered to exceed that amount. The Judicial Finance Commission ruled that to require the County to exceed the maintenance of effort funding amount under §211.393.6 would be unreasonable under §50.640 RSMo. The Judicial Finance Commission ruled that once a county has paid the maintenance of effort funding mandated pursuant to the formula as set forth in §211.393.6, a county may not be required under §50.640 to pay additional sums for Juvenile Court personnel. (L.F. p. 212-229).

The Judicial Finance Commission also ruled that even if the reasonableness test under §50.640 RSMo. superceded the maintenance of effort requirement of §211.393, that the Circuit Court's funding request is factually unreasonable "in light of the totality of Petitioner's county budget." (L.F. p. 220). In reaching this conclusion, the Judicial Finance Commission stated:

“Petitioner testified to the rapid depletion of its reserve funds, which it claims – and we agree – make it unreasonable for it to assume additional costs for positions that it did not contemplate funding out of its own pocket. Petitioner also stated that the budget documents reveal that other county departments have not been adding staff. We agree. In light of this fact, it is unreasonable to mandate Petitioner to add personnel expenditures in one area of the budget while other areas are not allowed to add personnel. While Petitioner did not dispute that the deputy juvenile officer in question provided services that were of value to the county, Petitioner made it known that there were other services which might also be of value that cannot be funded in light of the current fiscal crisis in which Petitioner finds itself. Viewed in the totality of Petitioner’s budget, then, it is unreasonable for Petitioner to be required to fund the second half of the deputy juvenile officer’s salary.” (L.F. pp. 220-221).

Cooper County presented no evidence at the hearing before the Judicial Finance Commission other than an exhibit showing amounts Cooper County has paid in prior years in support of the Juvenile Office. (Tr. p. 11-12). The attorney for Cooper County stipulated to all of the exhibits and testimony offered by the Circuit Court on the issue of reasonableness. (Tr. p. 37-39). When asked by the Judicial Finance Commission Chairman whether the County had any evidence that

the funding request was unreasonable, the attorney for Cooper County stated “No sir.” (Tr. p. 41). The Commission Chairman asked the attorney for Cooper County whether he could articulate the reason Cooper County did not believe the deputy juvenile officer was needed by the Court, and the attorney responded, “To tell you the truth, no, I really can’t.” (Tr. p. 72-73). At the outset of the hearing while the Judicial Finance Commission was attempting to clarify the issues with the attorneys, the attorney for Cooper County stated that he did not propose to introduce any evidence or argue the facts as to reasonableness. (Tr. p. 19-20).

The Presiding Commissioner and Chief Financial Officer for Cooper County were present at the hearing and were called by the Circuit Court to testify concerning the financial circumstances of the County. The Chief Financial Officer, Darryl Kemp, testified that the County is in good financial condition. When asked whether the County had the funds to pay the deputy juvenile officer’s salary, Mr. Kemp stated that the County had the money to pay it and volunteered that the County has a \$1 million reserve. (Tr. p. 81).

David Brickner, the Presiding Commissioner of Cooper County, testified that he was the responsible person to speak for the County Commission on the issues before the Judicial Finance Commission. (Tr. p. 82). Mr. Brickner was asked directly by the Judicial Finance Commission Chairman whether he thought the deputy juvenile officer was necessary for the Juvenile Court’s operation, and he responded, “The Court says it’s necessary, and I don’t know that I disagree.”

(Tr. p. 84). When asked to state the County's objection to paying the deputy juvenile officer's salary, Mr. Brickner testified that the County had only two objections. One reason was he believed the deputy juvenile officer's salary should be no higher than the salary for a chief sheriff's deputy, which is approximately \$26,000. The other reason was that the County was seeking a legal interpretation of its obligation under the maintenance of effort statute. (Tr. pp. 83, 86-87). Mr. Brickner stated that the County had the money in general revenue reserves to pay the deputy juvenile officer's salary. (Tr. p. 85-86). Mr. Brickner was asked if the County had any other objections to payment of the salary and he responded that it did not. (Tr. pp. 86-87).

The Judicial Finance Commission elicited evidence by requesting statements of counsel as to facts which were confirmed by the Commission to be uncontradicted. (Tr. p. 66). The statement on behalf of the Circuit Court was that Deputy Juvenile Officer Colycott was not easily replaceable by someone else with his qualifications and that he was not at all replaceable by someone with his particular knowledge of what goes on in Cooper County. The caseload for the Cooper County Juvenile Office had gone from approximately 30 to 40 children in 1995 to over 200 children in the year 2003. It was absolutely essential to have Deputy Juvenile Officer Colycott in order for the Circuit Court to function. It was the opinion of Chief Deputy Juvenile Officer Linda Lacey that without Deputy Juvenile Officer Colycott the Juvenile Office could not function and that she

would not know what to do without a deputy juvenile officer, and that it would be absolutely impossible. It was pointed out that the Judicial Finance Commission in its 2001 decision concerning the parties stated that it was sensitive to the need for the deputy juvenile officer in Cooper County and that it understood the dilemma that Cooper County would be in without this deputy juvenile officer. (Tr. p. 66-69). The Judicial Finance Commission Chairman asked the attorney for the County whether in terms of this statement of facts whether the County wanted to introduce any contrary evidence and he indicated that it did not. (Tr. p. 70).

Judge Kenton G. Askren testified that he has been the Juvenile Judge in Cooper County for over 14 years, and he helped prepare the Juvenile Office budgets which are signed by the Presiding Judge, Judge Donald Barnes. (Tr. p. 89). Judge Askren stated that the Juvenile Court would not be adequately able to handle Juvenile Office referrals without Deputy Juvenile Officer Colycott. (Tr. p. 98). Deputy Juvenile Officer Colycott handles primarily all of the delinquency cases. Chief Deputy Juvenile Officer Linda Lacey handles primarily the abuse and neglect cases. A large part of Deputy Juvenile Officer Colycott's job is working on early intervention to avoid a petition being filed and the children being adjudicated and potentially removed from the community and their families. (Tr. p. 90). Deputy Juvenile Officer Colycott's salary was set in the initial grant process by looking at what a person with his qualifications would make for that position as a juvenile officer. (Tr. p. 92). When Mr. Colycott was hired under the

grant it was understood by the County Commission that the funding for this position may have to later be undertaken and funded by the County. This was understood and assumed or the Court would not have entered into the grant application and gotten into a position of having Mr. Colycott handle over 200 cases and later having nobody to handle it because the Court did not have the funding. (Tr. p. 93-94). Judge Askren was asked concerning the Commission's agreement to continue payment of the deputy juvenile officer's salary in the event the grant expired. Judge Askren testified that Mr. Brickner, the Presiding County Commissioner of Cooper County, was involved in the conversations concerning the Division of Youth Services grant funding and that the Court relied upon the County Commission's essential promise that there would be County funding if there were not alternative funding sources. (Tr. p. 95). The County has supplemented the grant funding by paying approximately \$2,000 per year towards Deputy Juvenile Officer Colycott's salary. (Tr. p. 59).

In its 1997 Budget Message, Cooper County acknowledged the need for the County to fund the deputy juvenile officer position if the grant funding expired. (L.F. pp. 61-63). In the 1997 Budget Message, Cooper County stated, "Looking further ahead to 1998 and 1999, if grant funding is discontinued, appropriations from General Revenue will be increased by . . . \$33,315.87 for the Juvenile Office. This increased funding will be necessary in order to keep the current personnel who are now paid entirely or partially through grant funding . . ." (L.F. p.63).

Judge Askren testified that to his knowledge there had never been a retraction by the County Commission of this acknowledgement. (Tr. p. 96).

The number of juveniles served by Deputy Juvenile Officer Colycott is documented in the annual reports to the Division of Youth Services. These reports were admitted into evidence for the years 1995 through 2003 (with the exception of 1997, which was missing). The reports reflect that in 1995 Deputy Juvenile Officer Colycott served 95 youth in Cooper County and that that number had increased to 276 for the fiscal year 2003. (L.F. pp. 177-205). The addition of Deputy Juvenile Officer Colycott has enabled a prompt response to the intake and processing of new referrals, and supervision of juveniles has become more effective so the juveniles can be consistently followed through their probationary period. The position enables the individual needs of juveniles to be assessed and community concerns regarding juveniles to be addressed in a timely manner. The position has had a significant effect on keeping the number of commitments of juveniles to the Division of Youth Services from increasing. (L.F. pp. 177-205).

The grant applications for the fiscal years 2003 and 2004 were admitted into evidence. These applications describe the number of youth served by the grant program. The applications describe in detail the responsibilities and duties faced by the Juvenile Office in Cooper County and the need for funding to maintain the position of Deputy Juvenile Officer Colycott. Deputy Juvenile Officer Colycott's duties are described in detail in the grant applications.

(L.F. pp. 129-176). If the County had only one deputy juvenile officer, there would be less than adequate intake and assessment of referrals and supervision being provided to juveniles. The applications describe the situation in Cooper County and the need for assistance in dealing with juvenile law violators as being “dire.” (L.F. p. 132).

The Presiding Judge of the Eighteenth Judicial Circuit, Judge Donald Barnes, was unable to attend the hearing. Judge Barnes wrote a letter to the Commission which was admitted into evidence. The letter, dated March 17th, 2004, indicates the Court’s great concern over the fact that if the deputy juvenile officer position was eliminated, services would be drastically curtailed and that the County would have to forego services to juveniles involving delinquency matters or antisocial conduct matters. (L.F. pp. 52-53).

The Circuit Court offered evidence as to what Deputy Juvenile Officer Colycott’s salary would be if he had been adopted as a state employee. The state salary schedule showed that Deputy Juvenile Officer Colycott would be paid \$2,615 per month if his position had been adopted as a state employee position. (Tr. pp. 47-48; L.F. pp. 206-207). Deputy Juvenile Officer Colycott’s monthly salary is \$2,666. (Tr. p. 85).

Regarding the maintenance of effort calculation, Cooper County offered an exhibit which asserted that the maintenance of effort funding obligation of Cooper County was to be \$24,987.29. (L.F. p. 51). This amount did not include the

amount budgeted by Cooper County in 1997 for attorney fees for the Juvenile Office, nor did it include the amount budgeted for Deputy Juvenile Officer Colycott's salary (the salary was funded by a state grant, but the funds were administered through the County's budget in 1997). (Tr. p. 13). The County's 1997 budget shows the sum of \$32,500.00 was budgeted for the "grant juvenile officer." (L.F. p. 128). The 1997 budget showed attorney fees for the Cooper County Juvenile Office as being \$3,650, which is shown in the budget as a reimbursement to Pettis County. This was explained to the Judicial Finance Commission as the method for paying attorney fees for the Cooper County Juvenile Office. (L.F. p. 127; Tr.p. 105). Adding these amounts into the formula would bring the Cooper County maintenance of effort obligation to \$61,137.29.

POINTS RELIED ON

I.

THE JUDICIAL FINANCE COMMISSION ERRED IN DECIDING THAT AS A MATTER OF LAW A COUNTY IS OBLIGATED TO SPEND NO MORE FOR JUVENILE COURT SERVICES THAN THE MINIMUM AMOUNT CALCULATED PURSUANT TO §211.393.6 (MAINTENANCE OF EFFORT FORMULA) BECAUSE §211.393.6 PROVIDES FOR A MINIMUM LEVEL OF FUNDING RATHER THAN A MAXIMUM LEVEL OF FUNDING, AND §50.640 REQUIRES A COUNTY TO PAY EXPENSES OF THE CIRCUIT COURT THAT ARE NECESSARY TO CARRY OUT THE ESSENTIAL FUNCTIONS OF THE CIRCUIT COURT (I.E. NOT UNREASONABLE).

State ex rel. Twenty-Second Judicial Circuit v. Jones, et al., 823 S.W.2d 471

(Mo. banc 1992).

Circuit Court of Jackson Cty v. Jackson Cty, 776 S.W.2d 925 (Mo. App. 1989).

In re: 1979 Budget of the Juvenile Court of St. Louis County, 590 S.W.2d 900

(Mo. banc 1980).

Farmers' Elective Co-op, Inc. v. Missouri Department of Corrections,

977 S.W.2d 266 (Mo. banc 1998).

§211.393.6, RSMo. 1998.

§50.640, RSMo. 1995.

?211.011, RSMo. 1995.

§211.351, RSMo. 1995.

II.

THE JUDICIAL FINANCE COMMISSION ERRED IN ADDRESSING THE ISSUE OF WHETHER THE CIRCUIT COURT’S FUNDING REQUEST WAS FACTUALLY UNREASONABLE (I.E. NOT ESSENTIAL FOR CARRYING OUT THE FUNCTION OF THE CIRCUIT COURT) BECAUSE SUCH A FINDING WAS BEYOND THE SCOPE OF THE PLEADINGS IN THAT THE COUNTY DID NOT CLAIM IN ITS PETITION FOR REVIEW THAT THE CIRCUIT COURT’S FUNDING REQUEST WAS FACTUALLY UNREASONABLE (I.E. NOT ESSENTIAL FOR CARRYING OUT THE FUNCTION OF THE CIRCUIT COURT), BUT RATHER ASSERTED ONLY THAT THE FUNDING REQUEST WAS PROHOBITED BY §211.393 (MAINTENANCE OF EFFORT PROVISION) AND THE HANCOCK AMENDMENT.

Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d466

(Mo. banc 2004).

§211.393.6, RSMo. 1998.

III.

THE JUDICIAL FINANCE COMMISSION ERRED IN FINDING THAT THE CIRCUIT COURT’S FUNDING REQUEST WAS FACTUALLY UNREASONABLE BECAUSE THE BASIS FOR THIS CONCLUSION IS NOT REASONABLY APPARENT FROM THE RECORD IN THAT IT WAS UNDISPUTED THAT THE EXPENSE FOR THE DEPUTY JUVENILE OFFICER IS NECESSARY FOR THE COURT TO CARRY OUT ITS ESSENTIAL FUNCTIONS AND THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE FINDING THAT THE COUNTY IS SUFFERING FROM A RAPID DEPLETION OF ITS RESERVE FUNDS, THAT IT IS IN A FINANCIAL CRISIS, THAT OTHER COUNTY DEPARTMENTS HAVE BEEN UNABLE TO ADD STAFF, OR THAT THE COUNTY DID NOT CONTEMPLATE FUNDING THE DEPUTY JUVENILE OFFICER POSITION OUT OF ITS OWN POCKET.

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Bosley v. Berra, 688 S.W.2d 353 (Mo. banc 1985).

§211.393, RSMo. 1998.

§50.640, RSMo. 1995.

§477.600.5(2), RSMo. 2003.

IV.

THE JUDICIAL FINANCE COMMISSION ERRED IN FINDING THAT THE CIRCUIT COURT FUNDING REQUEST WAS FACTUALLY UNREASONABLE BECAUSE THE JUDICIAL FINANCE COMMISSION FAILED TO CONSIDER ALL OF THE FACTORS IT IS REQUIRED TO CONSIDER UNDER THE LAW IN THAT THE JUDICIAL FINANCE COMMISSION FOCUSED ALMOST EXCLUSIVELY ON THE FINANCIAL CIRCUMSTANCES OF THE COUNTY AND DID NOT ADDRESS THE FACTUAL NEED OF THE CIRCUIT COURT TO HAVE PERSONNEL NECESSARY TO CARRY OUT ITS ESSENTIAL FUNCTIONS.

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(Mo. banc 1980).

Bosley v. Berra, 688 S.W.2d 353 (Mo. banc 1985).

§50.640.2, RSMo. 1995.

§477.600.5(2), RSMo. 2003.

V.

THE JUDICIAL FINANCE COMMISSION ERRED IN FINDING THAT AS A MATTER OF LAW §211.393 PROHIBITED A COUNTY FROM BEING REQUIRED TO FUND EXPENSES FOR ESSENTIAL CIRCUIT COURT PERSONNEL BEYOND THE MINIMUM FUNDING REQUIREMENTS ESTABLISHED BY §211.393 BECAUSE SUCH A FINDING VIOLATES THE SEPARATION OF POWERS PROVISIONS OF THE MISSOURI CONSTITUTION IN THAT THE COURT AS A SEPARATE BRANCH OF GOVERNMENT HAS THE INHERENT POWER TO HIRE ESSENTIAL PERSONNEL AND HAVE THE EXPENSES OF THE ESSENTIAL PERSONNEL PAID FOR BY THE COUNTY.

State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. banc 1970).

Clark v. Austin, 101 S.W.2d 977 (Mo. 1937).

McPherson v. U.S. Physicians Mut. Risk Retention Group, 99 S.W.3d 462

(Mo.App. 2003).

Mo. Const. art. II, ? 1.

§211.393, RSMo. 1998.

§50.640, RSMo. 1995.

VI.

THE JUDICIAL FINANCE COMMISSION ERRED IN CALCULATING THE MAINTENANCE OF EFFORT AMOUNT UNDER §211.393 TO BE \$24,987.29 BECAUSE THE CALCULATION FAILS TO INCLUDE ALL EXPENDITURES “BUDGETED FOR” EMPLOYEES OF THE JUVENILE COURT IN 1997 AS REQUESTED BY §211.393.6 IN THAT THE CALCULATION DOES NOT INCLUDE THE AMOUNT BUDGETED FOR DEPUTY JUVENILE OFFICER COLYCOTT OR THE AMOUNT BUDGETED FOR THE JUVENILE OFFICE ATTORNEY FEES.

Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d466

(Mo. banc 2004).

Farmers’ Elective Co-op, Inc. v. Missouri Department of Corrections,

977 S.W.2d 266 (Mo. banc 1998).

§211.363.6, RSMo. 1998.

§50.640.2, RSMo. 1995.

VII.

THE CASE SHOULD BE REMANDED FOR CONSIDERATION BY THE JUDICIAL FINANCE COMMISSION WITHOUT PARTICIPATION IN THE DECISION BY COMMISSIONER GERALD JONES BECAUSE COMMISSIONER JONES SHOULD HAVE RECUSED HIMSELF FROM PARTICIPATION IN THE DECISION IN THE CASE IN THAT COMMISSIONER JONES' IMPARTIALITY MIGHT REASONABLY HAVE BEEN QUESTIONED IN ADJUDICATING THE CASE.

In Re: K.L.W., 131 S.W.3d 400 (Mo.App. 2004).

Supreme Court Rule 2.03, Canon 3(E)(1).

Supreme Court Rule 2.04.

Court Operating Rule 12-3.03.

ARGUMENT

I.

THE JUDICIAL FINANCE COMMISSION ERRED IN DECIDING THAT AS A MATTER OF LAW A COUNTY IS OBLIGATED TO SPEND NO MORE FOR JUVENILE COURT SERVICES THAN THE MINIMUM AMOUNT CALCULATED PURSUANT TO §211.393.6 (MAINTENANCE OF EFFORT FORMULA) BECAUSE §211.393.6 PROVIDES FOR A MINIMUM LEVEL OF FUNDING RATHER THAN A MAXIMUM LEVEL OF FUNDING, AND §50.640 REQUIRES A COUNTY TO PAY EXPENSES OF THE CIRCUIT COURT THAT ARE NECESSARY TO CARRY OUT THE ESSENTIAL FUNCTIONS OF THE CIRCUIT COURT (I.E. NOT UNREASONABLE).

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7. The Court reviews decisions of the Commission de novo, but defers to conclusions regarding reasonableness if the basis for the conclusions is apparent from the record. Bosley v. Berra, 688 S.W.2d 354 (Mo. banc 1985); Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004). However, the Court exercises its independent judgment in correcting errors of law. All Star Amusement, Inc. v. Director of Revenue, 873 S.W.2d 843 (Mo. banc 1994).

The County offered no evidence in the case other than its calculation of the maintenance of effort funding formula under §211.393.6. The County contended that it had paid the minimum maintenance of effort amount under §211.393.6 and, therefore, as a matter of law it could not be required to pay more expenses for the Juvenile Court.² The Judicial Finance Commission adopted this legal interpretation of §211.393.6 proposed by the County.

This interpretation negates the authority of the Judicial Finance Commission to make a determination of reasonableness under §50.640 if a county is meeting the maintenance of effort of funding requirement under §211.393.6. If meeting the funding requirement, a county may then refuse to pay for court personnel essential to the circuit court carrying out its function in juvenile court matters. This interpretation destroys the long-established procedure for determining reasonableness of circuit court expenses. This interpretation assumes that the legislature intended to revoke the authority of the Judicial Finance Commission to determine reasonableness of juvenile court expenses once a county spends the minimum funding mandated by §211.393.6.

Section 211.393.6 states:

² In the prior proceeding between the parties before this Court, the Court noted that “both sides agree that ‘maintenance of effort funding’ is not relevant to this case.”

(Footnote 2 of opinion). Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 at 468 (Mo. banc 2004).

“6. Each county in every circuit in which a juvenile court employee becomes a state employee shall maintain each year in the local juvenile court budget an amount, defined as "maintenance of effort funding", not less than the total amount budgeted for all employees of the juvenile court including any juvenile officer, deputy juvenile officer, or other juvenile court employees in calendar year 1997, minus the state reimbursements as described in this section received for the calendar year 1997 personnel costs for the salaries of all such juvenile court employees who become state employees. The juvenile court shall provide a proposed budget to the county commission each year. The budget shall contain a separate section specifying all funds to be expended in the juvenile court. Such funding may be used for contractual costs for detention services, guardians ad litem, transportation costs for those circuits without detention facilities to transport children to and from detention and hearings, short-term residential services, indebtedness for juvenile facilities, expanding existing detention facilities or services, continuation of services funded by public grants or subsidy, and enhancing the court's ability to provide prevention, probation, counseling and treatment services. The county commission may review such budget and may appeal the

proposed budget to the judicial finance commission pursuant to section 50.640, RSMo.”

Section 50.640.2 states:

“2. If the county governing body deems the estimates of the circuit court to be unreasonable, the governing body may file a petition for review with the judicial finance commission . . . If a petition for review is filed, the circuit court shall have the burden of convincing the judicial finance commission that the amount estimated by it and included in the budget is reasonable. In determining if the circuit court estimate is reasonable, the judicial finance commission shall consider the expenditures necessary to support the circuit court in relation to the expenditures necessary for the administration of all other county functions, the actual or estimated operating deficit or surplus from prior years, all interest and debt redemption charges, all capital projects expenditures, and the total estimated available revenues from all sources available for financing the proposed expenditures. In determining the reasonableness of any budget estimate involving compensation, the judicial finance commission shall also consider compensation for county employees with similar duties, length of service and educational qualifications. . .”

Section 211.393 was enacted in 1998. This statute made provision for the state to assume responsibility for paying the salaries of juvenile officers throughout the State of Missouri. While relieving the counties from this obligation for salaries, the statute requires each county to maintain a minimum level of funding for juvenile expenses. This minimum level of funding is set forth in the formula stated in §211.393.6. The formula is commonly known as the “maintenance of effort funding formula” or “MOE.” The statute states that this minimum level is to be “not less than” the amount calculated pursuant to the formula. §211.393.6.

If possible, §211.393 and §50.640 are to be interpreted in harmony with one another after consideration of the legal scheme and the plain meaning of the language used so that both statutes have meaning. Farmers’ Elective Co-op, Inc. v. Missouri Department of Corrections, 977 S.W.2d 266, 270 (Mo. banc 1998).

The Judicial Finance Commission has interpreted the wording in §211.393.6 to mean quite the opposite from the plain meaning of the words. Rather than a county being required to maintain “not less than” the calculated amount, the Judicial Finance Commission ruled that a county must pay “no more than” the formula amount. As the minority report in the Judicial Finance Commission opinion indicates, this interpretation turns the meaning of the statute on its head.

The cardinal rule of statutory construction requires the Court to ascertain the true intention of the legislature with due regard to the legislative objective. Collins v. Director of Revenue, 691 S.W.2d 246, 251 (Mo. banc 1985). The expressed intent of our legislature toward the protection of juveniles indicates it is highly unlikely the legislature would intend to affect funding requirements for juveniles in a way that would adversely affect their interests. That legislative intent is stated in §211.011 as follows:

“The purpose of this chapter is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court. This chapter shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control as will conduce to the child’s welfare and the best interests of the state, and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them. The child welfare policy of this state is what is in the best interests of the child.”

It is undisputed that hundreds of juveniles in Cooper County will be denied essential services as a result of the Judicial Finance Commission’s interpretation of §211.393.6. The interpretation would potentially be adverse to the best

interests of the juveniles throughout the State of Missouri. The interpretation is clearly adverse to the best interests of hundreds of juveniles in Cooper County.

Under our statutory scheme, the authority to hire and fix compensation for juvenile court employees is vested in the circuit court subject only to change by the Judicial Finance Commission. §211.351; §50.640. The reason the circuit court has this power concerning its personnel is that if the circuit court did not have such power, then the legislative department would be able to determine and control the ability of the judicial department to function simply by limiting the number of employees of the circuit court. Circuit Court of Jackson Cty v. Jackson Cty, 776 S.W.2d 925 (Mo. App. 1989).

There is nothing in §211.393 expressing the maintenance of effort calculation as a limitation on juvenile court expenditures that should be exceeded only at the option of the county. Rather, the statute is designed to encourage funding by the county of juvenile court functions that are essential for the best interests of juveniles. This statute was intended to prevent a county from redirecting savings from juvenile court personnel expenses to something other than the juvenile court operations. There is nothing in the statute which creates a limitation on the right of the circuit court to have its juvenile court functions funded at a level necessary to carry out its essential functions.

Pursuant to §50.640, budget estimates of the juvenile court are submitted to the county commission and the county commission shall not change those

estimates and shall appropriate the amounts estimated as originally scheduled by the circuit court. The county can then file a petition for review with the Judicial Finance Commission if it deems the circuit court estimates to be unreasonable. The Judicial Finance Commission is to then conduct a hearing to determine whether the circuit court estimate is reasonable under the circumstances. The statute sets forth specific factors to be considered by the Judicial Finance Commission in determining if the circuit court estimate is reasonable. §50.640.

Prior to the creation of the Judicial Finance Commission, the reasonableness of circuit court estimates were judged under a standard of whether the proposed expenditures were “lawful.” In reviewing whether an expense was lawful, three categories of expenses were deemed appropriate: “(1) those fixed by statute or absolutely reposed in the court’s discretion; (2) those the local government unit is required to provide because such expenditures were authorized previously; and (3) those reasonably necessary for the court to carry out its function.” State ex rel. Twenty-Second Judicial Circuit v. Jones, 823 S.W.2d 471, 472-473 (Mo. banc 1992), citing In re: 1979 Budget of the Juvenile Court of St. Louis County, 590 S.W.2d 900, 901. (Mo. banc 1980).

The third category concerning necessity of expenses has been analyzed by applying a test of whether a reduction or deletion of the budget items would seriously impair the Juvenile Court’s delivery of services. In re: 1979 Budget of the Juvenile Court of St. Louis County, supra 590 S.W.2d 900 at 901 (Mo. banc

1980). It has been generally recognized by this Court that employees which are reasonably necessary to carry out the functions of the Juvenile Court shall be provided. State ex rel. Judges for the Twenty-Second Judicial Circuit, 494 S.W.2d 39 at 41 (Mo. banc 1973). This Court has also pointed out that if a budget item was previously funded by the county in other fiscal years it is to receive a favorable presumption for approval. In re: 1979 Budget of the Juvenile Court of St. Louis County, 590 S.W.2d 900 at 902 (Mo. banc 1980).

The Judicial Finance Commission's interpretation of §211.393 means that there is no need for a hearing as provided in §50.640 if a county has maintained the minimum funding mandated by §211.393.6. The Judicial Finance Commission concluded that any funding request beyond this amount would be deemed unreasonable per se. This interpretation of §211.393.6 is not in harmony with §50.640. Section 50.640 specifically vests control of the circuit court budget with the circuit court subject only to review by the Judicial Finance Commission or this Court. The purpose of §50.640 is to keep the legislative department from having unilateral control over the circuit court budget. Circuit Court of Jackson Co., supra. Section 211.393 should not be read to transfer the authority over the circuit court budget to the county once a county has satisfied its minimum funding requirement of §211.393.6. Such interpretation would not be in harmony with the intention of the legislature as declared in §211.011. The legislature did not intend to put the best interests of the County ahead of the best interests of juveniles. The

legislature created the Judicial Finance Commission to determine reasonableness. The legislature did not intend to take away this authority when enacting §211.393.6. The Judicial Finance Commission's interpretation of §211.393.6 revokes its role in determining the reasonableness of the budget request for Deputy Juvenile Officer Colycott's salary even though necessity of the position to the Circuit Court's function was uncontested.

A review of the evidence compels this Court to determine that the Judicial Finance Commission's interpretation of §211.393.6 should not stand. Section 211.393.6 is not a limitation on the County's obligation to fund the salary of Deputy Juvenile Officer Colycott.

II.

THE JUDICIAL FINANCE COMMISSION ERRED IN ADDRESSING THE ISSUE OF WHETHER THE CIRCUIT COURT'S FUNDING REQUEST WAS FACTUALLY UNREASONABLE (I.E. NOT ESSENTIAL FOR CARRYING OUT THE FUNCTION OF THE CIRCUIT COURT) BECAUSE SUCH A FINDING WAS BEYOND THE SCOPE OF THE PLEADINGS IN THAT THE COUNTY DID NOT CLAIM IN ITS PETITION FOR REVIEW THAT THE CIRCUIT COURT'S FUNDING REQUEST WAS FACTUALLY UNREASONABLE (I.E. NOT ESSENTIAL FOR CARRYING OUT THE FUNCTION OF THE CIRCUIT COURT), BUT RATHER ASSERTED ONLY THAT THE FUNDING REQUEST WAS PROHOBITED BY §211.393 (MAINTENANCE OF EFFORT PROVISION) AND THE HANCOCK AMENDMENT.

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7. The Court reviews decisions of the commission de novo, but defers to conclusions regarding reasonableness if the basis of the conclusions is apparent from the record. Bosley v. Berra, 688 S.W.2d 354 (Mo. banc 1985); Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004). However, the Court exercises its independent judgment in correcting errors of law. All Star Amusement, Inc. v. Director of Revenue, 873 S.W.2d 843 (Mo. banc 1994).

This Court remanded the case to the Judicial Finance Commission for a determination as to the specific elements of the Circuit Court's budget request, however, factual reasonableness of the Circuit Court budget was not an issue that was ever disputed by Cooper County. In the action involving the 2003 budget, the only issue pled by Cooper County contesting the reasonableness of the Circuit Court request was whether §211.393 permitted the Judicial Finance Commission to direct payment of Circuit Court expenses for "personnel services." This Court rejected that contention and found that §211.393 did permit the Judicial Finance Commission to authorize payment for personnel services. Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004).

Upon remand, there was pending before the Judicial Finance Commission an additional Petition for Review in regard to the 2004 budget request by the Circuit Court. In this Petition for Review, Cooper County raised two new defenses. First, the County claimed that §211.393.6 did not permit the Judicial Finance Commission to direct payment of any expenses that exceeded the amount calculated pursuant to the maintenance of effort (MOE) funding formula in §211.393.6. Second, the County claimed that the Hancock Amendment created a constitutional prohibition against Cooper County being required to pay for the salary of the deputy juvenile officer. (L.F. pp. 10-15). Cooper County has never raised a claim that the funding request by the Circuit Court was factually unreasonable (i.e. Cooper County has never claimed that the position of the deputy

juvenile officer was not reasonably necessary for the Court to carry out its essential functions).

The Judicial Finance Commission consolidated the cases regarding the 2003 and 2004 budgets and on March 22nd, 2004, heard evidence in regard to both budgets. Cooper County presented no evidence at the hearing other than an exhibit showing the amount of money it claimed was the County's MOE amount under §211.393.6. Cooper County presented no witnesses. The County stipulated that it would rely on the Judicial Finance Commission's consideration of the evidence presented by the Circuit Court in determining the issue of reasonableness. (Tr. p. 7, 19-20). The attorney for Cooper County stated his position was that the case was "all about MOE" and that "once MOE is exhausted, I believe the County cannot be compelled to fund any further juvenile services." (Tr. p. 14). The attorney stated "I don't propose to introduce any evidence or argue the facts as to reasonableness." (Tr. pp. 19-20).

Cooper County did not affirmatively contest the issue of factual reasonableness of the Circuit Court budget request. It was uncontested at the hearing that the position held by Deputy Juvenile Officer Colycott was essential to the Circuit Court in carrying out its function in providing services to the youth of Cooper County.

With the issue not being contested by Cooper County, and the issue not being raised by Cooper County as an issue of contention, the Judicial Finance

Commission's ruling on the issue of factual reasonableness was beyond the scope of the pleadings or contentions made by Cooper County.

The issue was not tried by consent. The Juvenile Office offered evidence to satisfy this Court's directive that the Judicial Finance Commission consider reasonableness of "specific elements" of the Circuit Court budget request. Cooper Co., 124 S.W.3d 466, 469 (Mo. banc 2004).

III.

THE JUDICIAL FINANCE COMMISSION ERRED IN FINDING THAT THE CIRCUIT COURT'S FUNDING REQUEST WAS FACTUALLY UNREASONABLE BECAUSE THE BASIS FOR THIS CONCLUSION IS NOT REASONABLY APPARENT FROM THE RECORD IN THAT IT WAS UNDISPUTED THAT THE EXPENSE FOR THE DEPUTY JUVENILE OFFICER IS NECESSARY FOR THE COURT TO CARRY OUT ITS ESSENTIAL FUNCTIONS AND THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE FINDING THAT THE COUNTY IS SUFFERING FROM A RAPID DEPLETION OF ITS RESERVE FUNDS, THAT IT IS IN A FINANCIAL CRISIS, THAT OTHER COUNTY DEPARTMENTS HAVE BEEN UNABLE TO ADD STAFF, OR THAT THE COUNTY DID NOT CONTEMPLATE FUNDING THE DEPUTY JUVENILE OFFICER POSITION OUT OF ITS OWN POCKET.

Review of Judicial Finance Commission decisions is de novo and conclusions regarding reasonableness made by the Judicial Finance Commission are generally deferred to by this Court, however, conclusions should be deferred to only if they are reasonably apparent from the record. Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004).

Although the Commission is entitled to a certain degree of deference in regard to conclusions regarding reasonableness, the conclusions in this case

deserve some scrutiny. The basis for the factual conclusions made by the Judicial Finance Commission is not apparent from the record. At the hearing before the Judicial Finance Commission, the County offered no evidence to dispute the real need that exists in Cooper County for the services of Deputy Juvenile Officer Colycott. The County offered no evidence in the case other than its calculation of the maintenance of effort funding formula under §211.393.6. (Tr. pp. 11-12). At the outset of the hearing while the Judicial Finance Commission was clarifying the issues with the attorneys, the attorney for Cooper County stated that he did not propose to introduce any evidence or argue the facts as to reasonableness. (Tr. pp. 19-20).

Section 477.600.5(2) requires the Judicial Finance Commission to state in its opinion the conclusions of the Commission as to reasonableness of the Circuit Court budget request and to “state clearly” the reasons for its decisions.

The Judicial Finance Commission found the budget request to be factually unreasonable. In making this finding, the Judicial Finance Commission referred to testimony and evidence described as a “rapid depletion” of the County’s reserves and that the County is suffering from a “financial crisis.” The opinion referred to evidence that other County departments have not been adding staff and that it would be unreasonable to mandate adding personnel in one area of the budget while other areas are not allowed to add personnel. The Judicial Finance

Commission also stated that Cooper County “did not contemplate” funding the deputy juvenile officer position out of its own pocket. (L.F. pp. 220-221).

The record is void of evidence supporting any of these factual findings. Although a county’s financial condition is an appropriate factor to consider, there was no evidence presented or argued by the County on this issue. There was no reference in the evidence to other departments in Cooper County being unable to add staff or personnel. At no time by pleading or statement before the Judicial Finance Commission did the County take the position that its financial condition should affect the Commission’s decision. How the Judicial Finance Commission reached these conclusions is not reasonably apparent from the record. The Chief Financial Officer and the Presiding Judge for Cooper County were present at the hearing, but they were not called to testify on behalf of the County. The Circuit Court requested the testimony of each of these witnesses. (Tr. p. 80.) The Chief Financial Officer for the County stated that the County is in good financial condition. He testified that the County has a \$1 million reserve in the general revenue fund. (Tr. p. 81).

David Brickner, the Presiding County Commissioner of Cooper County, stated that he spoke for the whole Commission in regard to the issues before the Judicial Finance Commission. (Tr. p. 82). He testified that the County had the money to pay the salary of Deputy Juvenile Officer Colycott. (Tr. p. 86). He did not state or describe any financial problems suffered by Cooper County that would

support the conclusion stated by the Judicial Finance Commission that the County was suffering from a “financial crisis.” Mr. Brickner was specifically asked to state the basis for the County’s objection to payment of Deputy Juvenile Officer Colycott’s salary. He stated that he had two reasons, and confirmed that these were the only two reasons. The first reason was that the County did not believe that as a matter of law the County could be ordered to pay the salary. The other objection was that he believed the salary was too high. He believed the salary should be no more than that for a deputy sheriff. He was asked whether he had any other objections or reasons for the County not to pay the salary and he said no. (Tr. pp. 86-87).

The Judicial Finance Commission also stated that Cooper County “did not contemplate” paying the deputy juvenile officer’s salary out of its own pocket. (L.F. p. 220). Not only is there lack of evidence as to this finding, there is uncontradicted evidence to the contrary. The County’s 1997 Budget Message specifically set forth its contemplation of funding this position if grant funding was discontinued. In the message, the County stated “Looking further ahead to 1998 and 1999, if grant funding is discontinued, appropriations from general revenue will be increased by . . . \$33,315.87 for the Juvenile Office. This increased funding will be necessary in order to keep the current personnel who are now paid entirely or partially through grant funding in the . . . Juvenile Office.” (L.F.p. 121). Judge Kenton G. Askren has been the Juvenile Judge in Cooper

County since the position was initially funded by grant, and he testified as to the understanding with the County Commission as to what would be necessary when the grant funding expired. The need for the County to fund the position is not a surprise to the County as it was understood from the outset that this was a five-year grant and the County would have to undertake funding of the position when the fund expired. (Tr. p. 93). Cooper County offered no evidence or statement to the contrary.

The County offered no evidence disputing the need for the essential services of Deputy Juvenile Officer Colycott. Commissioner Brickner was questioned as to whether he doubted that need. He acknowledged that he was aware that the Court felt the officer was needed and he did not disagree. (Tr. p. 84).

However, the level of need for Deputy Juvenile Officer Colycott in Cooper County is not mentioned by the Commission in its decision except for a reference to his services being “of value to the County.” (L.F. p. 220). The Judicial Finance Commission did not specifically state its findings on the issue of necessity of the deputy juvenile officer as required by §477.600.5(2).

The general rule established by case law is that employees reasonably necessary to carry out the functions of the Juvenile Court are to be provided. State ex rel. Judges for the Twenty-Second Judicial Circuit, 494 S.W.2d 39, 41 (Mo. banc 1973). Necessity is determined by applying a test of whether reduction

or deletion of the budget item would seriously impair the Juvenile Court's delivery of services. In re: 1979 Budget of the Juvenile Court of St. Louis County, 590 S.W.2d 900, 901 (Mo. banc 1980). Section 50.640 does not appear to create a new test for determining reasonableness beyond that previously declared by judicial decisions of this Court. The statute sets forth specific factors that the Commission is to consider in making its decision on the issue of reasonableness. Those factors include the amount of expenditures needed by the Circuit Court in relation to the amount needed for other county functions, and also the revenue available from all sources for financing the Circuit Court expenditures.

The Circuit Court carries the burden of proving reasonableness. §50.640.2. This entails presenting evidence as to the degree of necessity for the particular funding. The Circuit Court should present evidence concerning the amount of expenditure needed by the Court. This evidence should be of "the discrete and concrete elements proposed" in the Circuit Court budget estimate. Bosley v. Berra, 688 S.W.2d 354, 355 (Mo. banc 1985). The Circuit Court should show a "factual need" for expenditures as opposed to a "declared need." Twenty-Second Judicial Circuit, *supra* at 41. The Circuit Court presented substantial evidence showing the concrete elements of the proposed budget request and the real factual need that exists in Cooper County for the services of Deputy Juvenile Officer Colycott.

Evidence regarding other factors described in §50.640 such as amounts needed for financing of other county functions or particular problems with a county's financial condition are to be considered. Cooper County would have particular knowledge of these facts, but the County presented no evidence on these factors. The County is in good financial condition. There is no evidence of other necessary personnel that are not being funded in the County or that any capital projects are planned. Although the Presiding Commissioner of Cooper County personally believes the salary of Deputy Juvenile Officer Colycott should be no more than a deputy sheriff, the evidence presented was that the salary of Deputy Juvenile Officer Colycott is commensurate with the salary of a state employee holding the same position. (Tr. pp. 47-48, 85).

It was uncontradicted that the position of Deputy Juvenile Officer Colycott is necessary for the Circuit Court to reasonably function. The specific factual findings made by the Judicial Finance Commission in support of its conclusion are not supported by the evidence. Because the basis for the Judicial Finance Commission's decision is not apparent from the record, this Court should review the matter de novo and enter a judgment determining the budget request of the Circuit Court to be reasonable.

IV.

THE JUDICIAL FINANCE COMMISSION ERRED IN FINDING THAT THE CIRCUIT COURT FUNDING REQUEST WAS FACTUALLY UNREASONABLE BECAUSE THE JUDICIAL FINANCE COMMISSION FAILED TO CONSIDER ALL OF THE FACTORS IT IS REQUIRED TO CONSIDER UNDER THE LAW IN THAT THE JUDICIAL FINANCE COMMISSION FOCUSED ALMOST EXCLUSIVELY ON THE FINANCIAL CIRCUMSTANCES OF THE COUNTY AND DID NOT ADDRESS THE FACTUAL NEED OF THE CIRCUIT COURT TO HAVE PERSONNEL NECESSARY TO CARRY OUT ITS ESSENTIAL FUNCTIONS.

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7. The Court reviews decisions of the Commission de novo, but defers to conclusions regarding reasonableness if the basis for the conclusions is apparent from the record. Bosley v. Berra, 688 S.W.2d 354 (Mo. banc 1985); Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004). However, the Court exercises its independent judgment in correcting errors of law. All Star Amusement, Inc. v. Director of Revenue, 873 S.W.2d 843 (Mo. 1994).

When the Judicial Finance Commission was created pursuant to statute adopted in 1982, the legislature set forth specific factors the Judicial Finance Commission is to consider in determining the issue of reasonableness. §50.640.2.

However, the longstanding test of reasonableness requires primary consideration of whether the expenses are reasonably necessary for the Circuit Court to carry out its essential functions. State ex rel. Twenty-Second Judicial Circuit v. Jones, 823 S.W.2d 471, 472-473 (Mo. banc 1992). This test requires consideration of whether deletion of the budget items would seriously impair the Juvenile Court's delivery of services. In re: 1979 Budget of the Juvenile Court of St. Louis County, 590 S.W.2d 900, 901. (Mo. banc 1980).

Apparently, the Judicial Finance Commission is to utilize the factors set forth in §50.640 as a means of balancing the level of necessity for the budget item with the financial circumstances of the county. If the financial circumstances of the county make funding of the budget request prohibitive for the county, then those factors are to be considered. However, factors relating to the financial circumstances of the county do not replace the need for the Judicial Finance Commission to consider the necessity of the budget request in relation to the functions of the juvenile court. Necessity must remain the primary consideration. To ignore necessity as the primary consideration ignores the well-established precedent stated by this Court (see history of test for reasonableness as described in State ex rel. Twenty-Second Judicial Circuit v. Jones, 823 S.W.2d 471).

Section 477.600.5(2) requires the Judicial Finance Commission to “state clearly” the reasons for its decision. The Judicial Finance Commission should state its conclusions regarding the degree of necessity in regard to the budget item in question. The Judicial Finance Commission should address the “discrete and concrete” elements of the budget request. Bosley v. Berra, 688 S.W.2d 354, 355 (Mo. banc 1985).

The decision entered by the Judicial Finance Commission makes one brief reference to the necessity for the deputy juvenile officer budget request, stating “While Petitioner did not dispute that the deputy juvenile officer in question provided services that were of value to the county. . .” (L.F. p. 220). On the other hand, the financial circumstances of the County are discussed in some detail. The decision fails to “state clearly” its findings on the primary factual issue (i.e. the level of necessity of the juvenile officer in relation to the functions of the Circuit Court).

The evidence before the Judicial Finance Commission on the issue of necessity is uncontradicted. The evidence is that it would be impossible for the Juvenile Office to carry out its functions without the deputy juvenile officer (Tr. p. 66-69), and that the need for the deputy juvenile officer is “dire.” (L.F. p. 32). The Judicial Finance Commission has noted in a prior decision that Cooper County would be in a “dilemma” without the deputy juvenile officer. (Tr. p. 69).

In making its decision, the Judicial Finance Commission incorrectly focused on the financial circumstances of the County and gave inadequate consideration to the dire level of need that exists in Cooper County for the services of Deputy Juvenile Officer Colycott.

Based on the uncontradicted record regarding the issue of necessity, this Court should enter its order determining the budget request of the Circuit Court to be reasonable.

V.

THE JUDICIAL FINANCE COMMISSION ERRED IN FINDING THAT AS A MATTER OF LAW §211.393 PROHIBITED A COUNTY FROM BEING REQUIERD TO FUND EXPENSES FOR ESSENTIAL CIRCUIT COURT PERSONNEL BEYOND THE MINIMUM FUNDING REQUIREMENTS ESTABLISHED BY §211.393 BECAUSE SUCH A FINDING VIOLATES THE SEPARATION OF POWERS PROVISIONS OF THE MISSOURI CONSTITUTION IN THAT THE COURT AS A SEPARATE BRANCH OF GOVERNMENT HAS THE INHERENT POWER TO HIRE ESSENTIAL PERSONNEL AND HAVE THE EXPENSES OF THE ESSENTIAL PERSONNEL PAID FOR BY THE COUNTY.

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7. The Court reviews decisions of the Commission de novo, but defers to conclusions regarding reasonableness if the basis for the conclusions is apparent from the record. Bosley v. Berra, 688 S.W.2d 354 (Mo. banc 1985); Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004). However, the Court exercises its independent judgment in correcting errors of law. All Star Amusement, Inc. v. Director of Revenue, 873 S.W.2d 843 (Mo. 1994).

The Judicial Finance Commission interpreted §211.393 as relieving a county from its obligation to provide necessary personnel to a circuit court if the county has already paid the amount calculated pursuant to the maintenance of effort funding formula. (L.F. pp. 212-221). If this interpretation were adopted, the statute usurps the inherent power of the circuit court to control its own employees. Mo. Const. art. II, §1; State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. banc 1970). As stated by Judge Price in a concurring opinion in Smith v. Thirty-Seventh Judicial Circuit of Missouri, 847 S.W.2d 755, 760 (Mo. banc 1993):

“The circuit courts occupy a unique position in our scheme of government. The court has the inherent authority to select, appoint, and control its own staff. State ex rel St. Louis County v. Edwards, 589 S.W.2d 283, 288-9 (Mo. banc 1979); State ex rel. Weinstein v. St. Louis Cty., 451 S.W.2d 99, 102 (Mo. banc 1970). This inherent authority is derived from the constitutional separation of the powers of government into three distinct departments. Mo. Const. art. II, §1; Weinstein, 451 S.W.2d at 101.”

The Missouri Constitution, art. II, §1 provides:

“Section 1. The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confided to a separate magistracy, and no person,

or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly dictated or permitted.”

In Weinstein, the Court’s inherent power was specifically held to apply to hiring of juvenile court personnel. The Court observed that such authority in the circuit court is grounded on the fundamental restriction against the legislature encroaching on the powers of the judicial branch. In order to function, the court needs a necessary staff of personnel and must have the right to appoint a necessary staff. That right cannot be denied by the legislative branch of government. Weinstein, at 102.

The inherent power of the court to hire personnel is not unrestrained. The authority extends to the circuit court the right to select and hire employees that are “reasonably necessary to carry out its functions of care, discipline, detention, and protection of children who come within its jurisdiction, and to fix their compensation.” Weinstein, at 102.

In Weinstein, this Court stated “the arm which holds the scales of justice cannot be shackled or made impotent by either restraint, circumvention or denial by another branch of that government.” Id. at 102. The Court stated that a contrary conclusion would vest the legislative department with the power to determine the extent to which the judicial department can perform its

functions. Id. at 102. As with the present case, this could be done simply by limiting the number of employees within the judicial department, regardless of need.

The inherent powers of the court are essentially a protective power. The inherent powers of the court may not be usurped or destroyed by the General Assembly. Clark v. Austin, 101 S.W.2d 977, 988 (Mo. 1937).

The interpretation given to §211.393 by the Judicial Finance Commission would usurp the inherent judicial power of the court to provide for personnel necessary to its function. This interpretation would be a breach of the separation of powers clause of the Missouri Constitution and the inherent powers derived therefrom.

When a statute is susceptible to two constructions, one of which raises grave and doubtful constitutional questions, and the other by which such questions are avoided, the Court's duty is to adopt the latter. McPherson v. U.S. Physicians Mut. Risk Retention Group, 99 S.W.3d 462, 484 (Mo.App. 2003).

Assuming that the legislature would not pass a statute which was an affront to the separation of powers cause of the Constitution, §211.393 should not be interpreted in a manner which would prevent a circuit court from carrying out its essential functions. Section 211.393.6 simply mandates that a county maintain a minimum level of funding which approximates the amount of money saved by transferring juvenile officers' salaries to the state payroll. This is a minimum level

of funding, but still subject to provisions of §50.640. A county should be required to fund only those expenditures essential to the function of the court, but this holds true whether the county is spending more or less than the minimum amount set forth in §211.393.

A county is not compelled by §211.393.6 to pay any funding request by the court unless it is reasonably necessary under the provisions of §50.640. When considering whether expenses are reasonable (i.e. reasonably necessary to the court function), §50.640 directs the Judicial Finance Commission consider factors relative to the county's finances. A question may arise as to the county's obligation if in fact the county is suffering from a financial crisis and does not have the money to pay the court expenses, even though the expenses are reasonable. Fortunately, that is not the question here and need not be addressed.

This Court should reject the Judicial Finance Commission's interpretation of §211.393.6 as an affront to the separation of powers clause of art. II, §1 of the Missouri Constitution and the inherent power derived therefrom.

VI.

THE JUDICIAL FINANCE COMMISSION ERRED IN CALCULATING THE MAINTENANCE OF EFFORT AMOUNT UNDER §211.393 TO BE \$24,987.29 BECAUSE THE CALCULATION FAILS TO INCLUDE ALL EXPENDITURES “BUDGETED FOR” EMPLOYEES OF THE JUVENILE COURT IN 1997 AS REQUIRED BY §211.393.6 IN THAT THE CALCULATION DOES NOT INCLUDE THE AMOUNT BUDGETED FOR DEPUTY JUVENILE OFFICER COLYCOTT OR THE AMOUNT BUDGETED FOR THE JUVENILE OFFICE ATTORNEY FEES.

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7. The Court reviews decisions of the Commission de novo, but defers to conclusions regarding reasonableness if the basis for the conclusions is apparent from the record. Bosley v. Berra, 688 S.W.2d 354 (Mo. banc 1985); Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004). However, the Court exercises its independent judgment in correcting errors of law. All Star Amusement, Inc. v. Director of Revenue, 873 S.W.2d 843 (Mo. 1994).

To the extent that the maintenance of effort calculation under §211.393.6 may affect a determination of reasonableness under §50.640, the Circuit Court disagrees with the Judicial Finance Commission’s calculation of the maintenance of effort funding amount under §211.393.6. The Judicial Finance Commission

concluded that a county, as a matter of law, could not be required to exceed payment for juvenile court expenditures beyond the funding requirements calculated pursuant to §211.393.6. (Tr. pp. 219-220). The minority report to the Judicial Finance Commission's opinion concluded that the maintenance of effort funding calculation "informs" the Judicial Finance Commission's determination of reasonableness under §50.640. (L.F. p. 225). The Judicial Finance Commission adopted the County's maintenance of effort calculation of \$24,987.29. (L.F. pp. 51, 218, 222). This amount did not include the amount budgeted for the deputy juvenile officer in the calendar year 1997, nor did it include the Juvenile Office's attorney's fees. (Tr. p. 13).

Section 211.393 was enacted in 1998. The statute made provision for the state to generally assume responsibility for paying the salaries for juvenile officers throughout the State of Missouri. While relieving the counties from this obligation for payment of salaries, the statute requires each county to maintain a minimum level of funding for juvenile court expenses. This minimum amount (commonly referred to as the MOE) is calculated pursuant to a formula stated in §211.393.6 as being an amount "not less than the total amount budgeted for all employees of the juvenile court including any juvenile officer, deputy juvenile officer, or other juvenile court employees in the calendar year 1997, minus the state reimbursement as described in this section received for the calendar year

1997 personnel costs for the salaries of all such juvenile court employees who become state employees.”

Deputy Juvenile Officer Colycott did not become a state employee upon the passage of §211.393.6 because of an exception in the statute. Cooper County v. Circuit Court of the Eighteenth Judicial Circuit, 124 S.W.3d 466 (Mo. banc 2004). This exception arises from the definition of “Juvenile court employee” under §211.393.1(2) which excludes from the definition any position funded by public grant.

When interpreting a statute, the Court should consider the legislative purpose and plain meaning of the language used. Farmers’ Elec. Co-op, Inc. v. Missouri Department of Corrections, 977 SW2d 266, 270 (Mo. banc 1998).

The words in §211.393.6 state that the MOE calculation is to include all sums “budgeted for all employees of the juvenile court” in the calendar year 1997, minus certain state reimbursements. The calculation of the MOE as made by the Judicial Finance Commission does not include the amount budgeted for the deputy juvenile officer position. Although the money for the deputy juvenile officer position came from a state grant, the money was “budgeted for” in the County’s 1997 budget. The County’s 1997 budget shows the sum of \$32,500 was budgeted for the “grant juvenile officer.” (L.F. p. 128).

The uncontradicted evidence before the Judicial Finance Commission was that the County budgeted the sum of \$3,650 for attorney's fees in the 1997 budget. (L.F. p. 127; Tr. p. 105).

There is no wording in the statute indicating that the MOE amount is to not include sums budgeted for employees of the juvenile court that did not become state employees under §211.393. The purpose of the MOE provision is to require the county to maintain a minimum level of funding for continuation of services to juveniles in each county. The monetary level of the services to be maintained is the monetary level of the compensation of all employees of the juvenile court as of the calendar year 1997.

It is undisputed that the deputy juvenile officer in question was an employee of the Juvenile Court in 1997. It is undisputed that the deputy juvenile officer's paycheck came through the County Commission. The fact that state grant money went into the County Commission budget is a distinction that has little purpose when calculating the maintenance of effort funding amount under §211.393.6. The minimum level of funding intended by the legislature should include the amount "budgeted for" the deputy juvenile officer despite the fact that a portion of his salary was defrayed by a state grant.

Also, as the Judicial Finance Commission acknowledged, Cooper County played a role in obtaining the grant to fund the deputy juvenile officer's salary. (L.F. p. 216.) The County has paid the balance of the deputy juvenile officer's

salary not funded by the grant, and has additionally furnished fringe benefits in addition to compensation. It would be inconsistent with the plain meaning of the statute to ignore the amount budgeted for the deputy juvenile officer in making the MOE calculation.

To ignore the amount budgeted for the deputy juvenile officer would lead to a misleadingly low figure if the MOE calculation is utilized in judging the reasonableness of the Circuit Court budget request under §50.640. This is so because the MOE calculation would not properly represent the level of services provided in the calendar year 1997 as intended by §211.393.6.

If the maintenance of effort calculation influences either the County's obligation to fund the position of the deputy juvenile officer, or informs the Judicial Finance Commission's determination of reasonableness under §50.640, the deputy juvenile officer's salary as budgeted for in 1997 should be included in the MOE calculation. Alternatively, if the salary is not to be included in the MOE calculation, the calculation should not influence or inform the Judicial Finance Commission in its consideration of the issues.

VII.

THE CASE SHOULD BE REMANDED FOR CONSIDERATION BY THE JUDICIAL FINANCE COMMISSION WITHOUT PARTICIPATION IN THE DECISION BY COMMISSIONER GERALD JONES BECAUSE COMMISSIONER JONES SHOULD HAVE RECUSED HIMSELF FROM PARTICIPATION IN THE DECISION IN THE CASE IN THAT COMMISSIONER JONES' IMPARTIALITY MIGHT REASONABLY HAVE BEEN QUESTIONED IN ADJUDICATING THE CASE.

Review of decisions of the Judicial Finance Commission is de novo pursuant to §477.600.7.

Supreme Court Rule 2.03, Canon 3(E)(1) provides that a judge shall recuse in any proceeding in which the judge's impartiality might reasonably be questioned. The commentary to the Canon states that the judge is disqualified regardless of whether any of the specific rules in Canon 3(E)(1) apply. The commentary states that a judge should disclose on the record information that the judge believes the parties or the lawyers might consider relevant to the question of disqualification even though the judge believes there is no real basis for disqualification.

Pursuant to Supreme Court Rule 2.04, any person, even a non-lawyer, who acts as an officer performing judicial functions, including a court commissioner, shall be considered a judge for purposes of Supreme Court Rule 2.

It was discovered after the hearing before the Judicial Finance Commission that Commissioner Gerald Jones was represented by the attorney for Cooper County in a separate action pending in the Circuit Court of Cape Girardeau, State of Missouri, in Case No. 04-CG-CV00531, styled State ex rel. City of Jackson, Relator v. Bill J. Reynolds, Treasurer of Cape Girardeau County, Missouri, and Gerald Jones, Larry Bock, Joseph Gambill, Cape County Girardeau County Commissioners, Respondents. The representation of Commissioner Jones in this separate action by Attorney McCullah was not disclosed to Appellant at or prior to the hearing before the Judicial Finance Commission and Appellant was unaware of this fact.

The issue is not whether Commissioner Jones had any actual bias or prejudice in favor of Cooper County, but whether a reasonable person looking on as a bystander might question his impartiality based on the facts. In Re: K.L.W., 131 S.W.3d 400 (Mo.App. 2004).

The separate proceeding in Cape Girardeau County concerned issues of financial obligations of Cape Girardeau County. The issues in the present case concern the financial obligations of Cooper County.

Appellant does not question the honesty or integrity of Commissioner Jones. However, Appellant believes that it was entitled at a minimum to be advised of Attorney McCullah's representation of Commissioner Jones in this separate proceeding in Cape Girardeau County.

The cause should be remanded to the Judicial Finance Commission for consideration without participation by Commissioner Jones. Pursuant to Court Operating Rule 12-3.03, this Court may appoint a temporary replacement for any member of the Judicial Finance Commission who is disqualified.

CONCLUSION

Appellant requests an interpretation of §211.393 declaring that the statutory provision does not prohibit the Judicial Finance Commission from determining the Circuit Court budget to be reasonable if the maintenance of effort amount is being exceeded by the County. Alternatively, Appellant seeks a declaration that the interpretation of §211.393.6 made by the Judicial Finance Commission would be an affront to the separation of powers clause of art. II, §1 of the Missouri Constitution. Appellant seeks a declaration that the issue of factual reasonableness was not an issue pled or contested by the County and therefore was an issue the Judicial Finance Commission was not required to consider. Alternatively, Appellant seeks a declaration that the basis for determination of factual reasonableness made by the Judicial Finance Commission is not apparent from the record. Appellant seeks a determination that Judicial Finance Commission member Gerald Jones should not have participated in the decision in this case for the reason that his impartiality might reasonably have been in question in adjudicating the case.

Appellant requests a decision of this Court declaring the Circuit Court budget request to be reasonable after a de novo review of the record.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, the undersigned counsel for Appellant, hereby certify pursuant to Rule 84.06(c) that the foregoing Appellant's brief (1) includes the information required by Rule 55.03; (2) complies with the limitations contained in Rule 84.06(b); and (3) contains 12,254 words, excluding the sections excepted by Rule 84.06(b)(2) of the Missouri Supreme Court Rules, based on the word count that is part of Microsoft Word.

I do hereby further certify that the double-sided, high density, IBM-PC-compatible 1.44 MB, 3 1/2-inch size disks provided to the Missouri Supreme Court and the Attorney for Respondent have been scanned for viruses and that they are virus-free.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify by my signature that two true and complete copies of the foregoing Appellant's Brief, together with a floppy disk, were served this 18th day of October, 2004, by depositing the same in the U.S. Mail, postage prepaid and properly addressed to Mr. William McCullah, Attorney for Petitioner, P.O. Box 370, Forsyth, MO 65653.

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